

REMARKS

Entry of this Amendment is proper under 37 C.F.R. § 1.116 because the Amendment places the application in condition for allowance for the reasons discussed herein; and does not raise any new issues requiring further search and/or consideration. Entry of the Amendment is thus respectfully requested.

Claims 1, 30 and 32 are amended herein. Claim 1 is amended to recite "obtained from" rather than "derived from" for purposes of clarification, and to remove the recitation that the second adenovirus genome is different from said first adenovirus. Claims 30 and 32 are amended to remove the term "substantially". Thus, no prohibited new matter is presented by way of this Amendment. Applicants reserve the right to file a continuation or divisional application directed to any subject matter deleted by way of this Amendment.

Double Patenting

Claims 1, 3, 6, 8, 11, 20-21, 25-27, and 36 stand rejected under the judicially created doctrine of obviousness-type double patenting as purportedly unpatentable over claims 23, and 25-29 of U.S. Patent No. 6,479,290.

In the interest of expediting prosecution, a Terminal Disclaimer over U.S. Patent No. 6,479,290 is submitted herewith. Thus, Applicants respectfully submit that the double patenting rejection has been obviated.

Rejections under 35 U.S.C. § 112, Second Paragraph

Claims 1, 3-4, 6-30, 32, and 36-37 stand rejected under 35 U.S.C. § 112, second paragraph, as purportedly indefinite.

Claim 1 stands rejected for the recitation of a genome "deriving from" the second adenovirus genome. It is purportedly unclear how closely related the derived sequences are to the original adenovirus. Claim 1 has been amended herein to recite "is obtained from" rather than "derived from", in the interest of clarification of the relationship between the sequences and the original adenovirus. Thus, Applicants respectfully submit that this rejection has been obviated.

Claim 1 stands rejected for the recitation of "different", as this term is purportedly not defined by the claim, or explained in the specification. Claim 1 has been amended herein to remove the recitation that the second adenovirus genome is different from said first adenovirus. Applicants note for clarification that the first adenovirus is an animal adenovirus and the second adenovirus is a human adenovirus, as discussed on page 7 of the specification.

Claims 30 and 32 stand rejected for the recitation of the phrase. Claims 30 and 32 have been amended herein to remove "substantially". The term "substantially" is purportedly not defined by the claim or the specification. Thus, Applicants respectfully submit that the rejection has been obviated.

Applicants respectfully request that the rejections under 35 U.S.C. §112, second paragraph, be withdrawn.

Application No. 09/867,475
Atty. Dkt. No. 017753-146

C O N C L U S I O N

Based on the foregoing, this application is believed to be in condition for allowance. A Notice to that effect is respectfully solicited. However, if any issues remain outstanding after consideration of this Amendment and Reply, the Examiner is respectfully requested to contact the undersigned so that prosecution may be expedited.

In the event any further fees are due to maintain pendency of this application, the Examiner is authorized to charge such fees to Deposit Account No. 02-4800.

Respectfully submitted,

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By: _____



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